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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

IN RE: TOLL ROADS LITIGATION
PENNY DAVIDI BORSUK; DAVID
COULTER; EBRAHIM E. MAHDA;
TODD QUARLES; TODD
CARPENTER; LORI MYERS; DAN
GOLKA; and JAMES WATKINS on
Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY; SAN JOAQUIN HILLS
TRANSPORTATION CORRIDOR
AGENCY; ORANGE COUNTY
TRANSPORTATION AUTHORITY;
3M COMPANY; BRIC-TPS LLC;
RHONDA REARDON; MICHAEL
KRAMAN; CRAIG YOUNG; SCOTT
SCHOEFFEL; ROSS CHUN;
DARREL JOHNSON; LORI
DONCHAK; WILLIAM P. DUFFY;
COFIROUTE USA, LLC; and DOES
3-10, inclusive,

Defendants.

Case No.: 8:16-cv-00262 AG (JCGx)

**PLAINTIFFS' REQUEST TO LIFT
STAY FOLLOWING NINTH
CIRCUIT'S DENIAL OF
DEFENDANTS' 23(F) AND 1292(B)
REQUESTS**

Judge: Hon. Andrew J. Guilford
Courtroom: 10D
Complaint Served: Jan. 15, 2016
Removed: Feb. 16, 2016

1 Plaintiffs Penny Borsuk, David Coulter, Ebrahim Mahda, Todd Quarles, Todd
 2 Carpenter, Lori Myers, Dan Golka, and James Watkins (collectively, “Plaintiffs”),
 3 through their respective attorneys of record, hereby submit the following Request to
 4 Lift Stay Following the Ninth Circuit’s Denial of Defendants’ 23(f) and 1292(b)
 5 Requests for Review.

6 **UPDATE ON DEFENDANTS’ APPEAL TO THE NINTH CIRCUIT**

7 On April 24, 2019, the Ninth Circuit denied Defendant 3M’s Petition for
 8 Permission to Appeal this Court’s Class Certification Order, holding: “The court, in
 9 its discretion, denies the petition for permission to appeal the district court’s October
 10 3, 2018 order granting class action certification.” See Ninth Circuit Order Dated April
 11 24, 2019, attached as Exhibit 1. The Ninth Circuit also denied Defendants’ request
 12 for 28 U.S.C. § 1292(b) review notwithstanding Defendants setting forth their
 13 arguments about how this case involves issues of first impression as to the meaning
 14 of Streets and Highways Code § 31490, the types of transmissions at issue and the
 15 amount of the damages for each type of transmissions (alleging certification of the
 16 class creates a “death knell” for them). See 3M Petition at pp. 10, 15-18, 24, attached
 17 as Exhibit 2.

18 Specifically, 3M (and all the other Defendants who joined in 3M’s petition),
 19 argued:

20 This is the first case ever brought under § 31490. Both in its class
 21 certification order and at subsequent hearings, the district court repeatedly
 22 emphasized that the issues underlying Plaintiffs’ § 31490 claims warrant
 23 immediate appellate review under 28 U.S.C. § 1292(b). (*See* Exhibit 1, at
 24 20.) The court declared that the issues are “significant, complex, unclear
 25 under state law.” (Dkt. 496; Sept. 24, 2018 Hrg. Tr. At 5:1-3.) Later, the
 26 court reiterated: “I think this case has sufficient complexity through no fault
 27 of the parties where a 1292(b) appeal is appropriate.” (Dkt. 502; Oct. 1, 2018
 28 Hrg. Tr. at 7:1-3.)

Consistent with the district court's statements, **3M is moving the district court to certify its orders for interlocutory review under 28 U.S.C. § 1292(b)**. If the court does so, this Court should grant the § 1292(b) petition and consolidate it with this appeal so the Court can address all issues at once. Granting a Rule 23(f) petition in parallel with a § 1292(b) petition is a highly effective way to streamline proceedings because it allows the Court to "clarify some imprecision in the case law, while at the same time giving the parties (and the lower court) a better sense as to which aspects of the class certification might reasonably be open to subsequent reconsideration." *Waste Mgmt. Holdings, Inc. v. Mowbray*, 208 F.3d 288, 295 (1st Cir. 2000) (granting Rule 23(f) review); *see also Tilley v. TJX Cos., Inc.*, 345 F.3d 34, 39 (1st Cir. 2003) (granting Rule 23(f) review because the parties "have fully briefed the merits, and postponing a decision would be wasteful").

Exhibit 2 at 24-25 (emphasis added).

To which the Ninth Circuit unequivocally responded, "To the extent that petitioner seeks relief under 28 U.S.C. §1292(b), petitioner's request is denied. Any pending motions are denied as moot."

All other Defendants joined in 3M's petition and did not file separate requests. There being no other appeals pending, and the Ninth Circuit denying 3M's request to hear their contemplated §1292(b) motion (or to provide §1292(b) relief), Plaintiffs respectfully request that this Court lift the stay in this matter and set a status conference to take place on May 13, 2019¹, or as soon as is practicable, to set dates for the hearings on Plaintiffs' Motion for Approval of Class Notice Plan, and to reset the Trial date.

¹ The Parties will be appearing before this Court on May 13, 2019, in the Associated Industries Insurance matter for a hearing on Plaintiffs' and TCA's Motions to Stay.

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Date: April 25, 2019

Respectfully submitted,

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Date: April 25, 2019

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1 Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), the above-listed filing attorney
2 certifies that all other signatories listed, and on whose behalf this filing is submitted,
3 concur in this filing's content and have authorized its filing.

4
5 Date: April 25, 2019

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